

# GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

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September 10, 2004

## VIA FACSIMILE AND FEDERAL EXPRESS

Renee D. Salzmänn, Esq.  
Federal Election Commission  
999 E. Street, NW  
Washington, D.C. 20463

Re: MUR 5388

Dear Ms. Salzmänn:

As you know, this firm represents James W. Treffinger and Robert A. Mathers (the "Respondents") in the above-referenced matter. With thanks for your patience,

this letter sets forth the Respondents' preliminary response to the Federal Election Commission's Factual and Legal Analysis. Further, as you and I have discussed on several occasions, we will supplement this letter in the near future as we obtain relevant documents, many of which are in the possession of the United States Attorney's Office for the District of New Jersey; and as we have an opportunity to confer with Mr. Treffinger, who, as you know, is incarcerated at FCI Schuylkill in Pennsylvania. Indeed, you informed me that no decisions would be made with respect to this matter before your office receives a supplemental submission from our firm.

First, with respect to the actions with which the Commission takes issue, the Respondents acted on the advice of counsel. At all relevant times, the Respondents were represented by Henry Klingeman, a former federal prosecutor, and Karen Riecker, an associate at Mr. Klingeman's firm, Klingeman Turano, L.L.C. Mr. Klingeman and Ms. Riecker were retained to investigate, evaluate, and provide guidance regarding the Commission's rules, regulations, and relevant statutes. Following the release of Advisory Opinion 2003-17, which set for the parameters of the Respondents' use of the campaign funds to pay legal expenses, the Respondents relied upon counsel's interpretation and did what they were told had been authorized by the Commission. Indeed, it is difficult to imagine that Mr. Treffinger would knowingly or willfully take any inappropriate actions during the summer of 2003 as he awaited sentencing in federal court. 2 U.S.C. § 437g(a)(5)(B).

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September 10, 2004


Page 2 —

Second, it is significant to note that Matthew Kirnan, the treasurer for the majority of the time, was, in fact, fired for his failures to adequately maintain the campaign's finances. Mr. Kirnan's significance cannot be understated. Mr. Treffinger relied on his representations which, Mr. Kirnan said, were based upon information received from the Commission. Mr. Kirnan, not Mr. Treffinger, compiled, reviewed and signed all the relevant documents. Most significantly, Mr. Kirnan's actions as treasurer directly impact the Commission's proposal that funds be returned to contributors. As you may know, Mr. Kirnan pleaded guilty to charges in connection with Mr. Treffinger's case and is, therefore, unavailable, and likely unwilling, to assist us in unraveling precisely what he did. It was only after Mr. Kirnan's termination that Mr. Mathers graciously agreed to fill-in for him and help get the campaign's finances straightened out.

We are in the process of obtaining affidavits from individuals with relevant information and will include them with our supplemental submission. We are also in the process of obtaining documents from the government. After we have analyzed those documents and the relevant affidavits, we believe we will be in a better position to provide a substantial response that addresses, in detail, the issues raised by the Commission's analysis. Finally, please know that the Respondents are committed to reaching an amicable resolution to this matter and will cooperate with the Commission to the fullest extent possible.

Thank you for your kind attention to this matter. If you have any questions, or if I may be of any further assistance, please do not hesitate to contact me.

Very truly yours,



Michael A. Baldassare

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